

Double Patenting

Applicant intends to file a Terminal Disclaimer upon indication of allowable subject matter.

Claim Rejections – 35 USC §102

The Examiner's rejection of claims 8-15 under 35 USC §102(b) as being anticipated by JP 08176002 is traversed. JP 08176002 (reference "P") cannot anticipate the presently claimed invention. Reference P makes no suggestion of extracting the plant material at 100°C or boiling. The reference discloses an aqueous extraction at 3-70°C. Therefore, different components are extracted in Applicant's invention. Further, Applicant does not claim the entire extract, but rather three components or peaks are specifically recited as being efficacious for preventing the attachment of *Haemophilus influenzae* to human cells. Reference P makes no such suggestion or disclosure.

Reference P teaches a method of preventing and treating cancer cell adhesion or pathogenic cell attachment and does not suggest or disclose *Haemophilus influenzae*. The Examiner has taken a large leap in assuming that attachment of cancer cells work or operate in any manner similar to *Haemophilus influenzae*. It is respectfully submitted that cell attachment is a highly unpredictable area and that the Examiner has inappropriately extended the teachings of reference P. An example of selective bonding and unpredictability is the *Hepatitis C* virus, wherein it selectively bonds to liver cells and no other cells. In similar fashion, the HIV virus is specific to lymphocytes. It is impossible to predict, with any level of certainty, from reference P, that the three isolated peaks presently claimed would prevent the adhesion of *Haemophilus influenzae* cells to human cells.

For these reasons, the Examiner's position that reference P anticipates the presently claimed invention is incorrect. Different temperatures are utilized for the instant extraction, different adhesion mechanisms are recited and the reference fails to

suggest three components of the mixture that would prevent *Haemophilus influenzae* adhesion.

The Examiner has apparently withdrawn reference CN 1063796 (reference "N"). Applicant believes that the withdrawal of that reference is appropriate.

The Examiner should also carefully consider the amendment to the only independent claim wherein the composition is now selected from “the group consisting essentially of” and not “comprising” so as to preclude the additional elements found in reference P.

There is no suggestion or teaching in either reference that would lead one reasonably to expect that non-adhesion of cancer cells would be predictive of non-adhesion of *Haemophilus influenzae* cells. For these reasons, the Examiner's rejections should be withdrawn. Lastly, it appears as if the Examiner has withdrawn her 35 USC §103 rejections.

Conclusion

Applicant believes that the claims presently before the Examiner are distinguishable from the prior art cited and applied by the Examiner. It is submitted that the claims are in condition for allowance, and allowance is respectfully solicited. Should the Examiner have any questions or concerns prior to passing this case onto allowance, she is invited to contact Applicant's undersigned representative.

Respectfully submitted,

Dated: July 14, 2004

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